

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ABINGDON**

UNITED STATES OF AMERICA

v.

**INDIVIOR INC. (a/k/a Reckitt
Benckiser Pharmaceuticals Inc.) and
INDIVIOR PLC,
Defendants**

Case No. 1:19cr00016

UNITED STATES' PROPOSED JURY INSTRUCTIONS

The United States of America proposes the following jury instructions. The first instruction starts on the next page.

Government's Instruction No. 1

Ladies and gentlemen of the jury, I'm going to give you final instructions now, since you will soon leave the courtroom to begin your deliberations. I will also send these instructions with you to allow you to review them again during your deliberations.

As I told you earlier, the government has accused the defendants Indivior Inc. and Indivior plc of committing certain crimes. These are only charges. In order for you to find a defendant guilty, you must be convinced beyond a reasonable doubt that the defendant committed the crimes as charged. If you are not convinced beyond a reasonable doubt that the defendant committed the crimes as charged, you must find the defendant not guilty of that crime.

During the course of the trial, you received all the evidence you may properly consider to decide the case. Your decision in the case must be made solely on the evidence presented at the trial. You should consider all the evidence that was presented to you.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

At times during the trial you saw lawyers make objections to questions or to answers by witnesses. This simply means that the lawyers were requesting that I make a decision on a particular rule of law. Do not draw any conclusion from such objections, or from my rulings on the objections. These are only related to the legal questions I had to determine, and should not influence your thinking. If I sustained an objection to a question, the witness was not allowed to answer it. Do not attempt to guess what answer might have been given had I allowed the question to be answered. If I told you not to consider a particular statement, you were told to put that statement out of your mind, and you may not refer to that statement in your deliberations.

Neither in these instructions nor in any ruling, action, or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be. During this trial, I may have occasionally asked questions of witnesses in order to bring out facts not then fully covered in testimony. Do not assume that I hold any opinion on the matter to which my questions were related.

Government's Instruction No. 2

It is my job to decide what rules of law apply to this case. I've explained some of these rules to you during the course of the trial, and I will explain others of them to you before you go to the jury room.

While the lawyers may have properly commented during the trial on some of these rules, you are to be guided only by what I say about them. You must follow all the rules as I explain them to you. You may not follow some and ignore others. Even if you disagree or don't understand the reasons for some of the rules, you are bound to follow them.

Government's Instruction No. 3

If you decide that the government has proved beyond a reasonable doubt that the defendants are guilty, it will also be my job to decide what the punishment will be.

You should not try to guess what the punishment might be. It should not enter into your consideration or discussions at any time.

Government's Instruction No. 4

The decision you reach in the jury room, whether guilty or not guilty, must be unanimous. You must all agree. Your deliberations will be secret. You will never have to explain your verdict to anyone.

Government's Instruction No. 5

The law presumes a defendant to be innocent of a crime. Thus, a defendant, although accused, begins the trial with a clean slate. That is to say with no evidence against it, and the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against a defendant. So, the presumption of innocence alone is enough to acquit the defendant unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt from all the evidence in the case. This presumption of innocence is an abiding presumption that goes with the defendant throughout the entire case and applies at every stage. As I have said many times, the government has the burden of proving the defendant's guilt beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you were told that it was only necessary to prove that a fact is more likely true than not. In criminal cases, the government's proof must be more powerful than that; it must be beyond a reasonable doubt.

Government's Instruction No. 6

An important part of your job will be making judgments about the testimony of the witnesses who testified in this case. You should decide whether you believe what each person had to say, and how important that testimony was. In making that decision I suggest that you ask yourself a few questions. Did the person impress you as honest? Did he or she have any particular reason not to tell the truth? Did he or she have a personal interest in the outcome of the case? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to observe accurately the things he or she testified about? Did he or she appear to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses? These are a few of the considerations that will help you determine the accuracy of what each witness said.

Government's Instruction No. 7

There are two types of evidence that are generally presented during a trial: direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts a fact, or a document that reflects a fact. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

While you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts that have been established by the evidence in the case.

Government's Instruction No. 8

During the trial, items were received into evidence as exhibits. The exhibits will be available in electronic format for viewing in the jury room, and the Clerk will show you how to view the exhibits. Examine the exhibits if you think it would help you in your deliberations.

Government's Instruction No. 9

A corporation may be held criminally responsible for acts of its officers, employees, or agents if they were acting within the scope of their authority, or apparent authority, and for the benefit of the corporation, even if such acts were against corporate policy or instructions.

A corporation, through the conduct of its officers, agents, or employees, may be convicted of a crime, including a crime involving knowledge and willfulness. The officer's, employee's, or agent's illegal conduct must be related to and done within the course of his employment and have some connection with the furtherance of the business of the corporation. So long as the criminal act is directly related to the performance of the duties which the officer, employee, or agent had the authority to perform, the corporation is liable for the criminal act.

Acts are within the scope or course of employment or authority if they are of the kind which the officer, employee, or agent was authorized to perform, and must be motivated, at least in part, by an intent to benefit the corporation.

Government's Instruction No. 10

Count One of the Superseding Indictment charges that the defendants conspired to commit mail fraud, wire fraud, and health care fraud.

For you to find the defendants guilty of this crime, the government must prove each of the following elements beyond a reasonable doubt:

1. That at some time during the dates charged there was an agreement between two or more persons or entities to (a) commit health care fraud (as I will instruct you as to Count Two); (b) commit wire fraud, (as I will instruct you as to Counts Three through Six) or (c) mail fraud (as I will instruct you as to Counts Seven through Twenty-Eight); and
2. That the defendant voluntarily joined the conspiracy knowing its purpose and intending to help accomplish that purpose.

Government's Instruction No. 11

A “conspiracy” is an agreement between two or more persons to join together to accomplish some unlawful purpose. It is a kind of partnership in crime, in which each member becomes the agent of every other member.

One may become a member of a conspiracy without knowing all the details of the unlawful scheme or the identities of all of the other alleged conspirators. If a defendant understands the unlawful nature of a plan or scheme, and knowingly and intentionally joins in that plan or scheme on one occasion, that is sufficient to convict him for conspiracy, even if he had not participated before, and even if he played only a minor part. The government need not prove that the alleged conspirators entered into any formal agreement, nor that they directly stated between themselves all the details of the scheme.

Similarly, the government need not prove that all of the details of the scheme alleged in the superseding indictment were actually agreed upon or carried out, nor must it prove that all of the persons alleged to have been members of the conspiracy were such, or that the alleged conspirators actually succeeded in accomplishing their unlawful objectives. However, mere presence at the scene of an event, even with knowledge that a crime is being committed, or the mere fact that certain persons have associated with each other, does not necessarily establish proof of the existence of the conspiracy. Also, a person who has no knowledge of a conspiracy, but who happens to act in a way that advances some purpose of a conspiracy, does not thereby become a conspirator.

Government's Instruction No. 12

Count Two of the Superseding Indictment charges that the defendants knowingly and willfully executed and attempted to execute a scheme and artifice to (1) defraud health care benefit programs as defined in Title 18, United States Code, Section 24(b), including Medicaid, Medicare, other public health care programs, private insurance providers, and other health care benefit programs, and (2) obtain by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by and under the custody and control of said health care benefit programs, in connection with the delivery of and payment for health care benefits, items, and services.

For you to find the defendants guilty of Count Two, you must be convinced that the government has proved each of the following elements beyond a reasonable doubt:

1. The defendants executed or attempted to execute a scheme or artifice intended to (a) defraud a health care benefit program or (b) obtain by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by and under the custody and control of said health care benefit programs, in connection with the delivery of and payment for health care benefits, items, and services.; and
2. That the defendants knowingly and willfully executed or attempted to execute that scheme.

I instruct you that Medicare, Medicaid, and health insurance companies are health care benefit programs.

The government need not prove that all the details of the scheme alleged in the indictment were actually carried out.

Government's Instruction No. 13

Counts Three through Six of the Superseding Indictment charge that the defendants knowingly and willfully executed and attempted to execute a scheme and artifice to defraud and obtain money or property by materially false and fraudulent pretenses, representations, and promises, and for the purpose of executing and attempting to execute such scheme and artifice, caused to be delivered by mail or private or commercial interstate carrier according to the direction thereon, certain materials.

For you to find the defendants guilty of Counts Three through Six, you must be convinced that the government has proved each of the following elements beyond a reasonable doubt:

1. The defendants executed or attempted to execute a scheme or artifice intended to (a) defraud or (b) obtain money or property by means of materially false or fraudulent pretenses, representations, or promises;
2. The defendants caused to be delivered by mail or private or commercial interstate carrier certain materials as set forth in each count for the purpose of executing or attempting to execute the scheme; and
3. That the defendants knowingly and willfully executed or attempted to execute that scheme.

The government need not prove that the mailing was central or crucial to the scheme, but only that it was done for the purpose of executing or attempting to execute the scheme.

The government need not prove that all the details of the scheme alleged in the indictment were actually carried out.

Government's Instruction No. 14

Counts Seven through Twenty-Eight of the Superseding Indictment charge that the defendants knowingly and willfully executed and attempted to execute a scheme and artifice to defraud and obtain money or property by materially false and fraudulent pretenses, representations, and promises, and for the purpose of executing and attempting to execute such scheme and artifice, caused to be transmitted by wire communication or radio communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds.

For you to find the defendants guilty of Counts Seven through Twenty-Eight, you must be convinced that the government has proved each of the following elements beyond a reasonable doubt:

1. The defendants executed or attempted to execute a scheme or artifice intended to (a) defraud or (b) obtain money or property by means of materially false or fraudulent pretenses, representations, or promises;
2. The defendants caused to be transmitted by wire communication or radio communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds; and
3. That the defendants knowingly and willfully executed or attempted to execute that scheme.

The government need not prove that the wire communication or radio communication was central or crucial to the scheme, but only that it was done for the purpose of executing or attempting to execute the scheme.

The government need not prove that all the details of the scheme alleged in the indictment were actually carried out.

Government's Instruction No. 15

“Intentionally” means to act deliberately and purposefully. That is, the act must have been the product of the defendant’s conscious objective rather than the product of a mistake or accident.

“Knowingly” means to act intentionally and voluntarily, and not because of ignorance, mistake, accident, or carelessness. Whether the defendant acted knowingly may be proven by a defendant’s conduct and by all of the facts and circumstances surrounding the case.

Intent or knowledge may not ordinarily be proven directly because there is no way of directly scrutinizing the workings of the human mind. In determining what the defendant knew or intended at a particular time, you may consider any statements made or acts done or omitted by the defendant and all other acts and circumstances received in evidence that may aid in your determination of the defendant’s knowledge or intent. You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or omitted.

You may find that the defendant acted “knowingly” and “willfully” if you conclude that he was “willfully blind” to what was obviously taking place. You may find that the defendant was “willfully blind” if the evidence proves beyond a reasonable doubt that he deliberately closed his eyes to what otherwise would have been obvious to him. That is, that he had a conscious purpose to avoid enlightenment.

Stated another way, a defendant’s knowledge of a fact may be inferred from willful blindness to the existence of a fact. Actual knowledge and deliberate or conscious avoidance of knowledge are the same thing.

On the other hand, for you to conclude that the defendant was “willfully blind” to the criminal nature of what was taking place, the evidence must show something more than careless disregard or mistake.

Government's Instruction No. 16

The defendants are charged as principals and as aiders and abettors.

A “principal” is a person who perpetrates a crime. But a person may violate the law even though he or she does not personally do each and every act constituting the offense if that person “aided and abetted” the commission of the offense.

Before the defendant may be held responsible for aiding and abetting others in the commission of a crime, it is necessary that the government prove beyond a reasonable doubt that the defendant knowingly and deliberately associated himself in some way with the crime charged and participated in it with the intent to commit the crime.

For you to find the defendant guilty as an aider and abettor, you must be convinced that the Government has proved each of the following elements beyond a reasonable doubt:

1. The defendant knew that the crimes charged were to be committed or were being committed;
2. That the defendant knowingly did some act for the purpose of aiding or encouraging the commission of that crime; and
3. That the defendant acted with the intention of causing the crimes charged to be committed.

Merely being present at the scene of the crime or knowing that a crime is being committed or is about to be committed is not sufficient conduct for you to find that the defendant aided and abetted the commission of that crime. The government must prove that the defendant knowingly associated himself with the crime in some way as a participant—someone who wanted the crime to be committed—not as a mere spectator.

Government's Instruction No. 17

You must consider the evidence as to each count charged in this case separately. If the government fails to prove each of these elements as to any of these counts beyond a reasonable doubt, you must find the defendant not guilty of that count.

Government's Instruction No. 18

A scheme is a plan or course of action formed with the intent to accomplish some purpose.

An "intent to defraud" means an intent to deceive or cheat for the purpose of causing some financial loss to another or bringing about some financial gain to oneself.

Intent or knowledge may not ordinarily be proven directly because there is no way of directly scrutinizing the workings of the human mind.

In determining what the defendant knew or intended at a particular time, you may consider any statements made or acts done or omitted by the defendant and all other acts and circumstances received in evidence that may aid in your determination of the defendant's knowledge or intent. You may infer, but you are certainly not required to, that a person intends the natural and probable consequences of acts knowingly done or omitted.

Government's Instruction No. 19

The words "knowingly and willfully" means that the act in question was done voluntarily and intentionally, and not by mistake or carelessness. If the jury finds that the defendant acted on any occasion solely by virtue of a good faith mistake or carelessness, then he cannot be found guilty of a crime charged in connection with that occasion. The defendant does not have any burden to prove his good faith mistake or carelessness. It is the government's burden to prove to you, beyond a reasonable doubt, that the defendant acted knowingly and willfully.

Government's Instruction No. 20

The superseding indictment charges that certain events or conduct occurred "on or about" a specific date.

The government does not have to prove that the events or conduct occurred on the exact dates alleged. Rather, it is sufficient if they occurred on a date reasonably near the date stated in the indictment.

Government's Instruction No. 21

It is your duty as jurors to talk with one another and to deliberate in the jury room. You should try to reach an agreement if you can. Each of you must decide the case for yourself, but only after consideration of the evidence with the other members of the jury. While this is going on, do not hesitate to re-examine your own opinions and change your mind if you are convinced that you were wrong. But do not give up your honest beliefs solely because the others think differently, or merely to get the case over with. In a very real way you are judges, judges of the facts. Your only interest is to determine whether the government has proved the defendant guilty beyond a reasonable doubt.

When you go to the jury room to begin considering the evidence in this case, you should first select one of the members of the jury to act as your foreperson. This person will help to guide your discussions in the jury room. Once you are there, if you need to communicate with me, the foreperson will send a written message to me. However, don't ever tell me how you stand as to your verdict, numerically or otherwise. As I mentioned several times, the decision you reach must be unanimous, you must all agree.

Here is a verdict form, which I will send with you to the jury room. I will also send to the jury room with you a copy of the indictment. And again, I remind you that the indictment is not evidence of anything. It is simply a charge. And when you have reached a decision, and the verdict form is completed, you should have the foreperson sign the verdict form at the end, and tell the Clerk you are ready to return to the courtroom.

CERTIFICATE OF SERVICE

I certify that on March 11, 2020, I electronically filed the foregoing Jury Instructions with the Clerk of Court via the CM/ECF system, which will send notification of the filing to all counsel of record in this matter.

/s/ Albert P. Mayer, VSB No. 86024